

SUBJECT: COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

1. PURPOSE. To establish the requirements and responsibilities for the Department of Energy (DOE) in meeting its statutory obligations for the review of covered transactions filed with the Committee on Foreign Investment in the United States (CFIUS). It is the goal of this process to:
 - a. maintain enhanced visibility and transparency of the CFIUS review process;
 - b. utilize DOE's expertise in assessing the potential implications for U.S. critical infrastructure and critical technologies resulting from a covered transaction;
 - c. consider the impact on U.S. national security interests, critical technologies, and critical infrastructures, long term projects for US requirements for sources of energy and issues arising under the Nuclear Non-Proliferation Act;
 - d. maintain the quality and responsiveness of the DOE's review of a covered transaction;
 - e. guarantee that the confidentiality requirements of 50 USC app. 2170(c) and 31 CFR 800.702(a) are maintained;
 - f. ensure that the DOE monitors compliance with mitigation agreements for which DOE is a signatory; and
 - g. ensure that adequate staff and budget resources are available to DOE elements for monitoring and certifying yearly compliance by parties to mitigation agreements with DOE.
2. CANCELLATION. None.
3. APPLICABILITY.
 - a. Departmental Elements. This Order applies to all Departmental elements, including those created after the Order is issued. Go to www.directives.doe.gov/pdfs/reftools/org-list.pdf for the most current listing of Departmental elements.

The Administrator of NNSA will assure that NNSA employees and contractors comply with their respective responsibilities under this directive. Nothing in this Order must be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

b. Contractors. Does not apply to contractors.

c. Exclusions. There are no exclusions.

4. REQUIREMENTS.

a. Each DOE component must establish a point of contact and internal process to accommodate CFIUS filings.

(1) DOE elements that receive a CFIUS case file from the Director of Investment Security (DIS) will analyze, at a minimum, any questions arising from the initial DIS analysis and identify other specific criteria in this instruction. The general timeframe for the analysis will be 14 days from the day the DIS staff forwards the summaries, unless otherwise specified.

(2) Risk analysis of a CFIUS case is composed of

(a) Criticality and/or vulnerability of the U.S. assets being acquired and

(b) threat to those assets posed by the acquiring company and/or country and the consequences to national security if the threat is realized.

(3) If any DOE component, during its review, identifies national security issues, that DOE component should evaluate whether risks may be mitigated to an acceptable level through use of a Mitigation Agreement.

b. Any DOE component that identifies a national security issue that cannot be mitigated during the initial 30-day review and therefore could lead to a recommendation for CFIUS to conduct a 45-day investigation should notify the DIS that further time may be required for review and justification for the request.

5. RESPONSIBILITIES

a. Secretary.

(1) Attends meetings as a permanent member of CFIUS.

(2) Provides full cooperation with CFIUS including ready access to DOE elements and information.

(3) Leads review of a covered transaction when delegated by the Secretary of the Treasury. As lead reviewer—

- (a) Recommends to CFIUS that a covered transaction will not impair the national security or that a further investigation should commence.
 - (b) Negotiates mitigation agreements to address or reduce national security concerns.
 - (c) Signs and transmits to specified members of Congress a notice of completion of a CFIUS review, certifying that there are no unresolved national security concerns with the covered transaction that is the subject of the notice.
 - (d) Signs and transmits to specified members of Congress a written report on the results of a CFIUS investigation, certifying the absence of any unresolved national security concerns, unless the matter under investigation has been referred to the President for decision.
 - (e) Delegates the above responsibilities to the Deputy or appropriate Assistant Secretary based on the action required.
- b. Deputy Secretary. Carries out any duties listed under paragraph 5a when delegated by the Secretary.
- c. Assistant Secretary for Policy and International Affairs.
 - (1) Provides general supervision of DIS for the duties outlined in paragraph 5d.
 - (2) Acts on recommendations from DIS with regard to actions to be taken on covered transactions.
- d. Director of Investment Security.
 - (1) Serves as the DOE representative to CFIUS and the primary DOE point of contact with the staff of the lead reviewer of a covered transaction including any queries for the parties to or the status of meetings about a covered transaction.
 - (2) Provides to appropriate DOE management a weekly status report on pending covered transactions.
 - (3) Provides to DOE senior leadership summaries of all covered transactions that possess implications to national security interests.
 - (4) Recommends to the Secretary, Deputy Secretary, and/or Assistant Secretary for Policy and International Affairs whether the DOE should recommend that CFIUS approve, mitigate, subject to a 45-day

investigation, or recommend that the President block a covered transaction.

- (5) Determines which DOE elements should perform ongoing CFIUS case processing, and, on a case-specific basis, which reviewers should augment a CFIUS review to ensure a robust and thorough review.
- (6) Determines, in cooperation with DOE elements, any proposals for enhancing the effectiveness of the CFIUS review process.
- (7) Recommends and implements policies and procedures for DOE's participation in the CFIUS review process.
- (8) Following receipt of a CFIUS filing, conducts an initial analysis consisting of:
 - (a) in consultation with the Department of Treasury, a tentative determination of foreign government control and determination of co-lead agency status;
 - (b) identification of the existence of DOE unclassified contracts or supply relationships involving the parties to a covered transaction;
 - (c) identification of classified contracts, facility security clearances, or security agreements by the parties to a covered transaction; and
 - (d) identification of any issues or interests arising from the proposed covered transaction related to DOE.
- (9) After initial analysis forwards the CFIUS file containing all available information pertaining to a covered transaction to the relevant DOE components electronically, to include a summary of the initial analysis under paragraph 5d(16)(a) and any questions arising from this analysis to assist the DOE components performing a review.
- (10) Reviews, evaluates, and coordinates comments from all DOE components. Where national security issues have been identified—
 - (a) calls and chairs meetings with affected DOE elements to clarify issues and arrive at a consensus with regard to a DOE position in the CFIUS filing.
 - (b) shares intelligence reports submitted by the Director of National Intelligence with cleared personnel to further evaluate a case.
- (11) If the DIS and the affected DOE Component determine that national security risks can be reduced to an acceptable level through a Mitigation Agreement, they must determine the appropriate monitoring strategy and

identify monitoring responsibilities if DOE will be a signatory to a Mitigation Agreement.

- (12) The DIS will notify the ASPI of all CFIUS covered transactions that have adverse implications for national security.
- (13) Following the receipt of reports from all DOE elements, formulates and recommends a DOE position on each CFIUS filing through the Assistant Secretary for Policy and International Affairs.
- (14) Following the initial review, the DIS will recommend one of the following:
 - (a) that the DOE clear the covered transaction with no further action, or
 - (b) that DOE clear the case conditioned upon one or more of the parties to a covered transaction entering into a mitigation agreement with some or all CFIUS member agencies prior to the close of the 30-day review period, or
 - (c) that DOE proceed to a 45-day national security investigation, or
 - (d) that the Secretary vote to recommend to the President to block the covered transaction.
- (15) The DOE report in each CFIUS filing forwarded though ASPI will contain:
 - (a) a summary of the parties;
 - (b) the lead agency reviewers;
 - (c) a summary of the covered transaction, including the total value;
 - (d) a statement on whether the U.S. business possesses critical infrastructure or critical technologies;
 - (e) a statement on whether the U.S. firm has the ability to impact long term national energy concerns and requirements for energy sustainability;
 - (f) a statement on the impact, if any, to issues regarding the Nuclear Non-Proliferation Act;
 - (g) preliminary identification of any proposed or recommended mitigation agreements, whether originating within DOE or another agency.

- (16) As the representative to CFIUS is the primary point of contact for the DOE reviewing and coordinating officials based on the nature and classification of covered transactions.
 - (a) For CFIUS cases in which either senior DOE management wants early assessments and/or there are complex technical issues, the DOE component with the most technical expertise in a CFIUS acquisition may share primary responsibility with regard to analyzing, reviewing, and coordination.
 - (b) For cases where a DOE Component shares primary responsibility with the DIS under the conditions described in paragraph 5d(16)(a), other DOE elements with interest in the case, in whole or in part, must be copied on all communications involving expedited analysis and decision memos, if feasible, before the communications are delivered to senior DOE management.
- (17) Forwards the final DOE positions on covered transaction to the CFIUS Chair.
- (18) Provide the DOE Assistant Secretary a copy of the memorandum signed by the CFIUS Chair.

e. DOE Component Point of Contact.

- (1) Becomes familiar with the statutory requirements for the CFIUS review process including all investigation timelines and procedures.
- (2) Notifies the DIS immediately upon discovery of potential national security concerns.
- (3) Evaluates covered transactions when required and, under the DIS's overall lead, serves as the primary offices in DOE responsible for:
 - (a) submitting a signed recommendation to the DIS by the lead Secretarial Officer of the program/office for a covered transaction;
 - (b) determining a rationale and objective for requiring further investigation in accordance with paragraph 5d(9)(a);
 - (c) providing assistance in drafting and negotiating any Mitigation Agreements;
 - (d) supporting the DIS in drafting decision memoranda for DOE senior leadership;
 - (e) briefing DOE senior leadership as required;

- (f) attending DOE CFIUS meetings in relevant cases in support of the DIS;
- (g) assisting the DIS in developing DOE input for a report to the President when required; and
- (h) assisting in the long term monitoring of Mitigation Agreements.

6. DEFINITIONS.

- a. CFIUS. The Committee on Foreign Investment in the United States as defined in Title 50, United States Code (U.S.C.) App. 2170, as amended.
- b. Covered transaction. a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at the primary tier, between a Federal agency and a person or a lower tier, between a participant in a covered transaction and another person. 31 CFR 19.200.
- c. Critical infrastructure: has the meaning given in 31 CFR 800.207.
- d. Critical technologies: has the meaning given in 31 CFR 800.208.
- e. Director of Investment Security (DIS). The DOE officer responsible for managing the DOE CFIUS review process and developing a unified DOE response to any and all CFIUS matters.
- f. DOE elements. All organizational entities and offices within the DOE that are required to assist in the examination of covered transactions and the reporting of findings and conclusions regarding national security concerns to the DIS.
- g. DOE component point of contact. A person or persons in individual DOE offices who are the primary contacts between the DIS and the DOE component.
- h. FINSAs. The Foreign Investment and National Security Act of 2007, Public Law 110-49, 121 Stat. 246.
- i. Mitigation agreement: An agreement between parties undergoing a CFIUS review and one or more of the CFIUS agencies to reduce the identified national security risks associated with a covered transaction.
- j. Report to the President. A written recommendation by CFIUS to the President to take a specific action related to covered transaction.
- k. Security agreements. Subsets of mitigation agreements that provide for the monitoring of mitigating security and technology control requirements through a variety of methods.

7. NECESSITY FINDING STATEMENT. In compliance with Sec. 3174 of P.L. 104-201 (50 U.S.C. 2584 note), DOE hereby finds that this Order is necessary for the protection of human health and the environment or safety, fulfillment of current legal requirements, or conduct of critical administrative functions.
8. CONTACT. For assistance, contact the Office of Policy and International Affairs at 202-586-8600.

BY ORDER OF THE SECRETARY OF ENERGY:

JEFFREY F. KUPFER
Acting Deputy Secretary